

REMARKS/ARGUMENTS

Applicant has reviewed and considered the examiner's remarks in the office action dated December 17, 2004 and the summary of the telephonic interview of March 15, 2005 between Applicant's attorney of record and the examiner and maintains that his invention is not novel and obvious in light of the Hochberger and Senieur patents for a variety of reasons.

With regards to the examiner's rejection of claims 1 - 3, 5 and 7 -11 under 35 U.S.C. 102(b) as being anticipated by the Hochberger patent, although it is true Hochberger discloses a hollow holder with open first and second ends; a base pole with a second pointed end and being hollow, Hochberger does *not* teach a means for attaching *the base pole first end* to a predetermined location between the holder first end and second end at a perpendicular angle. Rather, the Hochberger patent teaches a means for attaching a base pole *central end* to a predetermined location between an outer leg first and second end at a perpendicular angle.

Specifically, when comparing Applicant's invention to the Hochberger patent, the location for means of attaching one pole to another is different and of great importance. Applying Applicant's terms used in his application to Fig. 2 of the Hochberger patent, Hochberger includes a base pole (17) having a first end (27) and a second end (29) wherein the second end (29) is pointed. These structural elements are admittedly found in Applicant's invention. However, Hochberger does not include a holder (15) or (19) which attaches to the first end (27) of the base pole(17). Rather, the holder (15) or (19) attaches to "horizontal neck portions" (37) on the base pole (17). Applicant's invention includes no such horizontal neck portions. In fact, Applicant's invention includes no such neck portions at all.

This distinction as to where on the base pole a holder is secured is of great importance as the Hochberger patent creates a device wherein the holder (15) or (19) is in *parallel* relationship to the base pole whereas Applicant's invention is a device wherein the holder is in *perpendicular* relationship to the base pole. The fact that Applicant's holder is in perpendicular relationship to the base pole is of importance when using the invention as the angle of insertion of a fishing pole into the holder maintains an ideal fishing angle not achievable when using a standard vertical fishing pole holder.

Further, because of the distinction between the holder to pole positioning (parallel vs. perpendicular), the openings for the acceptance of a fishing pole vary between the Hochberger patent and Applicant's invention as well. The openings (31) in the Hochberger patent allow for vertical insertion of a fishing pole (see Fig. 1) whereas the openings in Applicant's application allow for horizontal insertion of a fishing pole (see Fig. 1 of Applicant's application). This distinction further aids in maintaining ideal fishing angles.

Even further, it appears that in the Hochberger patent, the base pole *is* the holder unlike Applicant's invention which has a *separate* base pole and holder. As shown in Fig. 1, Hochberger's base poles (15), (17) and (19), which are termed base poles because they are inserted into the ground for anchoring, actually hold the fishing poles (13). Thus, Hochberger does not include a separate base pole and a separate holder as does Applicant's invention.

During the above referenced telephonic conference with the attorney of record, the examiner stated that the Senieur patent "does not have a perpendicular relationship between the base and rod holding portion but such an arrangement would have been obvious to a person of ordinary skill in the art." However, the Senieur patent utilizes a closed end holder whereas Applicant's invention as claimed utilizes an open end holder. The openness of Applicant's holder is of importance as it permits fishing rods of various lengths to be inserted into the holder. The Senieur invention, on the other hand, permits fishing rods only of a limited size.

Further, the Senieur invention utilizes a base pole having a closed and pointed end which is insertable into the ground whereas Applicant's base pole is open and pointed. The openness of Applicant's base pole permits better grounding of the base pole into the ground as the ground material, be it sand, dirt or soil, not only surrounds the base pole but also enters the open portion of the base pole to provide stability. The Senieur invention, on the other hand, allows for the ground material to surround the base pole only, thereby not providing a fishing pole holder that is as anchored as Applicant's invention.

Even if the Senieur invention were combined with the Hochberger invention, Applicant's invention would still not be obvious. As discussed above, the Hochberger invention utilizes only one pole that serves as both a holder and a base. Thus, one must

combine the base of the Hochberger invention, which has an open and pointed second end for insertion into the ground like Applicant's invention, with the holder of the Senieur invention, which has only one open end *unlike* Applicant's invention. Alternatively, if one were to combine the holder of the Hochberger invention with the base of the Senieur invention, one would still not arrive at Applicant's invention as the base of the Senieur invention is *unlike* Applicant's invention for the reasons discussed above. Thus, regardless of which elements of the Senieur and Hochberger patents are combined, one of ordinary skill in the art would not make Applicant's invention obvious.

Thus, neither the Hochberger patent alone or in combination with the Senieur patent teach a fishing pole holder having Applicant's structure as set forth in claims 1 and 8. As claims 2 - 3, 5 - 8 and 10- 11 are dependent upon independent claims 1 and 8, these claims should also be allowable as they add further structure to the invention.

In view of the above amendments and remarks, Applicant believes the examiner will now find this patent application in a position for allowance and its expeditious passage to same is requested.

Should the examiner disagree or have any questions, comments or suggestions that will render this application allowable, a call to the undersigned attorney of record is invited.

Respectfully submitted,
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I HEREBY CERTIFY that the above response and amendment with attachments noted therein are being deposited with the United States Postal Service by "Express Mail Post Office to Addressee" service, U.S. Express Mail No. ED 933742915 US, on the 15th day of June, 2005, addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Legal Assistant